



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF SEPTEMBER 11, 2003**

CALL TO ORDER: Chairperson Cohen called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Cohen, Commissioners Weaver, Wieckowski, Harrison, Thomas, Sharma, Natarajan

ABSENT Cohen (left 10:10 p.m.)

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Assistant Deputy City Attorney II
Kathleen Chu, Senior Civil Engineer
Kathleen Livermore, Senior Planner
Cliff Nguyen, Planner II
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: None

CONSENT CALENDAR

It was agreed to add Item Numbers 3, 4, 5 and 8 to the consent list.

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2, 3, 4, 5 and 8.

Commissioner Natarajan recused herself from the vote on Items 2, 3, 4 and 5, because she has been employed by a firm that is working for the applicant of these items.

IT WAS MOVED (HARRISON/WEAVER) AND UNANIMOUSLY CARRIED BY THE FOLLOWING VOTE (6-0-1-0-0) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 2, 3, 4 AND 5.

Item 2. PACIFIC COMMONS - Auto Mall Parkway – (PLN2003-00298) - to consider Vesting Tentative Tract Map 7458 and a Preliminary Grading Plan to implement the Planned District Major Amendment, approved by City Council on July 22, 2003, modifying the approved land use and circulation plans for the Planned Development known as Pacific Commons (P-2000-214) in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An addendum was prepared and adopted for the Planned District Major Amendment finding the project to be consistent with the original plan and EIRs. (Continued from July 28, 2003)

HOLD PUBLIC HEARING;

AND

FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THIS VESTING TENTATIVE TRACT MAP AND PRELIMINARY GRADING PLAN WHICH IMPLEMENTS THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2003-00298 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATION, GOALS AND POLICES SET FORTH IN THE GENERAL PLAN AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2003-00298 VESTING TENTATIVE TRACT MAP 7458 AND PRELIMINARY GRADING PLAN, AS SHOWN ON EXHIBIT "S", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "T" (VESTING TENTATIVE TRACT MAP), EXHIBIT "U" (PRELIMINARY GRADING PLAN) AND EXHIBIT "V" (CONSTRUCTION WATER QUALITY AND PROTECTION PLAN PROVISIONS).

- Item 3. PACIFIC COMMON PLANNING AREA 1 – Cushing Parkway – (PLN2004-00010) - to consider a Finding for Conceptual Site Plan Approval for a 285,000 square foot Community Retail Shopping Center on a 25 acre parcel of land located, north of Auto Mall Parkway; east of I-880; west of Christy Street and south of Brandin Court in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An Addendum was prepared and adopted for the Planned District Major Amendment, finding the project to be consistent with the original plan and EIRs. This Conceptual Site Plan implements the Planned District Major Amendment.**

HOLD PUBLIC HEARING;

AND

FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THE CONCEPTUAL SITE PLANS WHICH IMPLEMENT THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2004-00010 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN PACIFIC COMMONS PLANNED DISTRICT DEVELOPMENT STANDARDS AND GUIDELINES SUPPLEMENT "B". THESE PROVISIONS INCLUDE THE COORDINATION OF THE MAJOR SITE SYSTEMS SUCH AS BUILDING ORIENTATION, VEHICULAR AND PEDESTRIAN CIRCULATION, PARKING LAYOUT, OPEN SPACE, PLAZA AREA LOCATIONS, CONCEPTUAL LANDSCAPING, AND CONCEPTUAL UTILITY LOCATIONS;

AND

APPROVE PLN2004-00010 PLANNING AREA 1 AS SHOWN ON EXHIBIT "A".

- Item 4. PACIFIC COMMON PLANNING AREA 2 – Cushing Parkway – (PLN2004-00011) - to consider a Finding for Conceptual Site Plan Approval for a 200,000 square foot Major Retail Development on an 18 acre parcel of land, north of Auto Mall Parkway, east of Christy, west of the extension of Pacific Commons Boulevard; and south of Curie Street in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An Addendum was prepared and adopted for the Planned District Major Amendment, finding the project to be consistent with the original plan and EIRs. This Conceptual Site Plan implements the Planned District Major Amendment.**

HOLD PUBLIC HEARING;

AND

FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THE CONCEPTUAL SITE PLANS WHICH IMPLEMENT THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND
FIND PLN2004-00011 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN PACIFIC COMMONS PLANNED DISTRICT DEVELOPMENT STANDARDS AND GUIDELINES SUPPLEMENT "B". THESE PROVISIONS INCLUDE THE COORDINATION OF THE MAJOR SITE SYSTEMS SUCH AS BUILDING ORIENTATION, VEHICULAR AND PEDESTRIAN CIRCULATION, PARKING LAYOUT, OPEN SPACE, PLAZA AREA LOCATIONS, CONCEPTUAL LANDSCAPING, AND CONCEPTUAL UTILITY LOCATIONS;

AND
APPROVE PLN2004-00011 PLANNING AREA 2 AS SHOWN ON EXHIBIT "B".

- Item 5. **PACIFIC COMMONS PLANNING AREA 3 – Cushing Parkway – (PLN2004-00019)** - to consider a Finding for Conceptual Site Plan Approval for a 225, 000 square foot Major Retail Development on a 21 acre parcel of land located, north of Auto Mall Parkway; east of the extension of Pacific Commons Boulevard; west of relocated Boscell Road and south of Curie Street in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An Addendum was prepared and adopted for the Planned District Major Amendment, finding the project to be consistent with the original plan and EIRs. This Conceptual Site Plan implements the Planned District Major Amendment.

HOLD PUBLIC HEARING;

AND
FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THE CONCEPTUAL SITE PLANS WHICH IMPLEMENT THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND
FIND PLN2004-00011 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN PACIFIC COMMONS PLANNED DISTRICT DEVELOPMENT STANDARDS AND GUIDELINES SUPPLEMENT "B". THESE PROVISIONS INCLUDE THE COORDINATION OF THE MAJOR SITE SYSTEMS SUCH AS BUILDING ORIENTATION, VEHICULAR AND PEDESTRIAN CIRCULATION, PARKING LAYOUT, OPEN SPACE, PLAZA AREA LOCATIONS, CONCEPTUAL LANDSCAPING, AND CONCEPTUAL UTILITY LOCATIONS;

AND
APPROVE PLN2004-00019 PLANNING AREA 3 AS SHOWN ON EXHIBIT "C".

The motion carried by the following vote:

AYES:	6 – Cohen, Harrison, Sharma, Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	1
ABSENT:	0
RECUSE:	0 – Natarajan

- Item 8. **ANNUAL REVIEW OF THE GENERAL PLAN AND HOUSING ELEMENT – Citywide – (PLN2004-00025)** – to consider an annual report on the status of the General Plan and implementation of the City's Housing Element. This project is statutorily exempt under CEQA Guidelines Section 15262, Feasibility and Planning Studies. Environmental analysis will be prepared for any subsequent proposals for General Plan Amendments or Zoning Text Amendments.

Commissioner Sharma noted an error on page 5, line 8 from the bottom, which should read, ". . . anticipated to go to the Planning Commission in late 2003.

IT WAS MOVED (HARRISON/THOMAS) AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

RECOMMEND THE CITY COUNCIL FIND THE ANNUAL REPORT IS STATUTORILY EXEMPT UNDER CEQA GUIDELINES, SECTION 15262, FEASIBILITY AND PLANNING STUDIES;

AND

RECOMMEND THE CITY COUNCIL FIND THAT THE ANNUAL REPORT OF THE GENERAL PLAN AND HOUSING ELEMENT ACCURATELY DEPICTS THE CURRENT STATUS OF THE CITY OF FREMONT WITH RESPECT TO THE GENERAL PLAN AND HOUSING ELEMENT;

AND

RECOMMEND THE CITY COUNCIL FORWARD THE ANNUAL REPORT OF THE GENERAL PLAN AND HOUSING ELEMENT TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, AS REQUIRED BY GOVERNMENT CODE SECTION 65400 (B).

The motion carried by the following vote:

AYES:	7 – Cohen, Harrison, Natarajan, Sharma, Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

Item 1. BHAVESH PATEL RESIDENCE – 45651 Montclair Terrace – (PLN2003-00137) - to consider a Planned District Minor Amendment to P-96-12 and a Preliminary Grading Plan to allow a new 8,245 square foot residence (including 1,068 square foot garages) within the Montclair II subdivision in the Mission San Jose Planning Area. This project is categorically exempt from CEQA review, per Section 15303, New Construction or Conversion of Small Structures.

Bhavesh Patel, owner, stated that he and his architect, Maurice Camargo, had updated the plans to incorporate the suggestions made by the Commission and to address concerns expressed by his neighbors during the June hearing. He had showed the updated plan to his neighbors, six of whom wrote supportive letters to the Commissioners. He also submitted approval from the homeowners association to the Commission. He displayed a site plan that showed his and the neighboring lots.

Maurice Camargo, architect, stated that during his 23 years designing hillside homes, all projects started out as a square peg in a round hole. He and his client had been working for more than one year with City staff on the design of this home. He summarized the concerns and their responses:

- Garage location and height – Workshop removed from attached two-car garage, which reduced size by 292 square feet, and moved further away from adjacent property line. Detached four-car garage reduced 454 square feet to two-car garage with attached carport for guest parking.
- Roof heights – Pitch changed from 6 to 12 pitch to 5 to 12 pitch, which dropped the main ridge 22 inches.

- Landscaping – Two Idaho Locust trees and one California Live Oak tree at southeast corner replaced with smaller trees not to exceed maximum height of 25 feet. Four California Live Oak trees at north side of the property to be removed and replaced with smaller trees not to exceed maximum height of 25 feet.
- Massing – Upper level dining and game rooms reduced. Lower level master bedroom and Bedroom 4 extended to stagger floor levels to offset vertical plane. Balconies added on west elevation to eliminate continuous two-story wall height. Game room and Bedroom 3 reduced and reconfigured. Roof added at north elevation of walkway/breezeway to emphasize stepping with existing grades.
- Reduced square footage: Upper Floor – dining room, bedroom 3, game room, bathroom 3 and garage reduced 282.73 square feet and equaled total of 3,924 square feet. Lower floor – office space eliminated, which amounted to 165 square feet.
- Added square footage: West elevation of upper floor.
- Architectural details: Window trim and cultured stone wainscoting added.

Commissioner Natarajan asked the sizes of the homes he had designed in the San Francisco/South Bay area. She asked that he address the fact that the building was located against the contours, rather than with the contours, of the land. She understood that the entrance had to face a ten-degree axis.

Mr. Camargo replied that the sizes of the homes he designed varied from 3,000 square feet to 10,000 square feet. The entrance still faced east at a ten-degree axis. The house had not been moved from the maximum of ten degrees true north. The focus was more toward stepping the east elevation. The outdoor, south-facing play area off the family room was reduced as much as possible to avoid excess retaining walls and wall height.

Commissioner Sharma asked what role the homeowners architectural design committee played in the neighborhood. How significant was this approval? Did this approval mean that the majority of the homeowners approved the project? He asked the applicant to commit to restricting the height of the trees to no more than ten feet.

Mr. Patel replied that the homeowners association had to approve design plans before a project could be brought to the Planning Commission. They reviewed design plans to make sure it fit within the neighborhood and had an approved architectural style. The trees were expected to grow to a height of 12 to 15 feet over a long period of time.

Commissioner Sharma insisted that he needed a promise that the trees would never block the neighbors' views; that the applicant agreed to be responsible for not allowing the trees to grow beyond that height, today or twenty years down the road. He suggested that this issue could be worked out with the neighbors, that the appropriate condition regarding the tree height could then be added. The roof was still the same size on the detached garage, and it still looked the same from the neighbor's point of view, although it had been reduced to accommodate two cars. He suggested that the roof cover only the garage and that a trellis, or some kind of covering that would provide shade, be constructed over the carport.

Mr. Patel promised to keep the height of the trees to no more than 25 feet, as noted in the conditions. He agreed to work with the neighbors concerning the height of the trees. If the type of tree needed to be changed, he would do it. He understood that the neighbor was concerned about the proximity of the attached garage, but he had received no complaint about the detached garage. The attached garage had been pushed approximately ten feet further away from the neighbor's property line. He claimed that the former planner had told him that changing the four-car garage to a two-car garage with two-car carport would reduce the total square footage. The roof of the detached garage would be one foot below the neighbor's backyard. Consequently, he did not believe the detached garage was that intimidating.

Mr. Camargo contended that the perimeter retaining walls might depend upon the walls and roof structure of the garage. If the roof were decreased, the attached two-car carport might not be allowed.

Mr. Patel agreed to Commissioner Sharma's suggestion regarding roofing just the garage and using some kind of cover for the carport, if City staff approved it.

Commissioner Thomas asked what portion of the lot would the house cover and what percentage of the lot was the 12,000 square feet.

Mr. Camargo stated that the structure, which included the garages, would cover 6.1 percent.

Mr. Patel guessed that it would be about 10 percent.

Commissioner Harrison noted that the condition concerning the California live oak used 25 feet as the maximum height. He agreed with Commissioner Sharma that the key word was "maintained" and asked if he was willing to do that. He suggested that the condition be amended to include the maintenance of the tree height to the neighbor's satisfaction.

Mr. Patel agreed.

Commissioner Wieckowski asked what the details were regarding the concrete path to house, as noted in the staff report.

Mr. Camargo replied that it would be used as a deck as access to the side door and the landform would remain "as is" and would be made of the same material as the other decks.

Vice Chairperson Weaver questioned the overall reduction of square footage. She could not reconcile the applicant's figures. She asked how much of the buildable lot was just the footprint of the house.

Mr. Camargo stated that the figures used in his presentation were correct. The upper floor would total 3,924.14 square feet, and he explained how he arrived at the figure. The lower floor would total 3,253 square feet.

Mr. Patel replied that the civil engineering plan showed the footprint of the house to be a little more than 50 percent of the buildable area of the lot.

Chairperson Cohen opened the public hearing.

Vice Chairperson Weaver disclosed that she had a brief conversation with the following speaker regarding this project.

Tony Boudames stated that he and Mr. Hashmi, along with two other neighbors, were most affected by this project. He recalled that after several years, he had finally received approval to build his home. He displayed a model that showed how his house followed the contours of the land, whereas, the applicant's home did not. His primary view would be of the two garages that were meant to house six cars, and he worried what might be behind them. He read from the minutes of the last hearing and suggested moving the attached garage to the south side of the lot, so that it would not entail using excessive fill, and would, somewhat, adhere to the contours of the land. In his opinion, the home had not changed much. He asked that something be installed on the property to show how the house would be located on the lot and how it would compare to the surrounding neighbors' homes. He stated that trees that grew to 25 feet would block his view, and he requested that the height be kept at 10 feet.

Commissioner Sharma asked how the applicant could get the house he wanted and still satisfy the speaker.

Mr. Boudames replied that the ceilings of the applicants home would be 20 feet, which could be lowered to help with the view. His house had no more than 13-foot ceilings. He believed that if the house was stepped with the hill, many of his concerns would be addressed. He noted that Commissioner Sharma was the only Commissioner who had approved of the project as it had originally been presented, which gave the applicant hope that the current design might be approved.

Commissioner Sharma stated that he agreed with the speaker concerning the height of the trees. However, the applicant should be allowed to build the house he wished, as long as it was within the City's ordinances and guidelines.

Mr. Boudames asked how many houses had been built in the hills with two separate garages for six vehicles. He stated that he would be happy if the detached garage "went away" and the attached garage was placed at a different location.

Chairperson Cohen asked where his lot was located in relation to the applicant's lot and if he had received approval for his design. He asked how large his home was to be.

Mr. Boudames replied that he was located on Aquilla Terrace above the applicant's lot. His project had been approved and was being framed at this time. His home would be 6,300 square feet.

Tauseef Hashmi stated that he hoped for a "win-win" situation, although there seemed to be a communication difficulty. The applicant deserved to have the home he wanted. He and his neighbors expected some impact on their property from this project, but he hoped to keep it to a minimum. Tree height was critical and needed to be decided here and now. He agreed that if the second story was stepped back to the south/southwest, the mass of the house would seem to be less. He welcomed the applicant to the neighborhood and stated that he believed that the concerns expressed would be addressed so that everyone could move on.

Chairperson Cohen asked where his home was located in relation to the applicant's lot and how large his home was.

Mr. Hashmi stated that he lived next to Mr. Boudames' lot on Agilla Terrace. His home was 5,100 square feet plus the garage.

Commissioner Sharma asked if the speaker wanted the applicant to move his house, decrease the height or some combination.

Mr. Hashmi replied that the house should be stepped down, which would drop the height of the house and not change the internal portion of the house very much. The separate garage would be a bigger block than the attached garage and would be higher than the attached garage. He did not like it but had been willing to accept it as a compromise.

Mr. Patel closed by stating that the roof pitch had been reduced, tree height would be lower, the detached garage roof would be lower than the hill level. The peak ridge would be close to six feet below the maximum allowed height and would be approximately 18 feet from Mr. Boudames' property line and approximately three feet above the level of his backyard. This would allow his view of the bay to be seen over the roof ridge. He wondered if Mr. Boudames was saying that since he could not get approval for a higher house, the applicant should not get the height he wanted. His house would not block Mr. Boudames' or Hashmi's views. Currently, there were no views from the lower ends of their properties, because the homes built below the applicant's property and the applicant's bare land blocked those views.

Commissioner Thomas asked if the lot south of the applicant's home had a house on it and how far was it from his property line. Was there a reason why the whole plan, house and garages, could not be shifted on the lot to the south, which was a much wider and larger buildable area than was the present location.

Mr. Patel replied that the construction on the lot south of his was almost completed and the neighbor expected to move in within two weeks. His garage started at the minimum requirement.

Mr. Camargo stated that if the house was moved south as far as possible, the driveway access would be too narrow, which he believed was fixed for this lot.

Commissioner Thomas asked why a curve could not be added to the driveway to accommodate moving the location of the building further south on the lot. She did not believe that it would affect the 10-degree axis.

Mr. Camargo replied that the grades would have to be changed.

Mr. Patel believed that another six months to a year would have to be spent with City staff to get approval, if such a change was made. Everything would have to be changed. He did not believe moving the house would be an advantage to the neighbors above his lot.

Commissioner Natarajan asked for more information about the ten-degree axis. Did the entrance have to face that 10 degrees or did the entire house? Because the house was designed to go against the contours of the land, the views, the height and massing became issues. She suggested "twisting" the side portions to step down the grade.

Mr. Patel answered that the fundamental block of the house faced the axis, as was recommended by his consultant. He did not want to break up the block. The two sides that encompassed the kitchen and family room on one side and the bedrooms on the other side could actually shift its axis, but they would not be symmetrical, which he did not want to disturb.

Mr. Camargo stated that the kitchen/family room side was on one level and could not be stepped. The bedrooms were stepped and were planned to move in smaller increments up the hill.

Commissioner Natarajan agreed that the first and second floors were stepped to fit the hillside, but the roof did not step along with those floors and with the land. This was a symmetrical house that was, effectively, designed to be located on a flat site. However, it was being placed against the contours of the land and the roof had not been stepped. If the roof were stepped, the mass and profile would be broken up. She used one of the renderings to illustrate her point. According to the hillside policies, the whole house should fit the contours of the land.

Mr. Camargo replied that the roof over the living room area had been broken up.

Mr. Patel replied that he had worked with civil engineers to be certain that the hillside was not disturbed. The bridges/decks were designed to eliminate the need for grading and fill.

Chairperson Cohen reiterated that disturbing the hillside as little as possible was just one part of the Hillside Ordinance. The physical design of the home did not comply with the contour of the hillside. "Working with civil engineers to minimize cut was, at best, half the battle." The Commission was obligated to enforce the Hillside Ordinance, which required that the house step with the contours of the land.

Mr. Camargo believed that the house did step with the hill. He agreed that the block of the house that needed to be on the 10-degree axis did not step. If the block was flipped, it was a whole new house with a whole new set of parameters.

Chairperson Cohen believed the Hillside Ordinance could be complied with if the house was significantly smaller. However, almost everyone who had come to the Commission with a project in the hills wanted the same oversized home, which had increased the Commission's tolerance for these large homes. He noted that the applicant was lucky that he was one of the last to build there, as his predecessors had a much harder time gaining approval for their homes.

Vice Chairperson Weaver asked why the garage could not come off the house at an angle to allow for a third vehicle space, which would then allow the elimination of the carport portion of the detached garage.

Mr. Camargo stated that if the wing was moved out, the grades would have to change, driveway would have to be longer, it would have to drop to meet the garage. A six-foot maximum skirt was allowed for a garage and it would have to be made higher.

Commissioner Sharma asked what was the applicant's best offer to address the mass and height of the building, as articulated by Mr. Hashmi.

Mr. Camargo asked if he was the neighbor on the north side. The two neighbors had two "drastically different vantage points from their homes." The garage had already been moved as far as possible and the roof pitch had been lowered.

Commissioner Sharma asked about the height of the ceilings.

Mr. Camargo replied that the ceiling in the main part of the house was kept within the pitch of the roof. With regard to the trees, they would be planted on the lower perimeter of the property, and he believed that 25 feet would not be too high at that location.

Chairperson Cohen closed the public hearing.

Commissioner Thomas asked why the house could not be located 15 to 20 feet farther south on the lot and what prevented a curved driveway.

Planner Nguyen believed that the house could be moved further south on the property, as it would not be in constrained area. However, the applicant believed that changing the location of the house would not conform to Vastu design guidelines and would involve considerable changes to the site plan, such as drainage and grading.

Commissioner Thomas questioned how this would not conform to Vastu guidelines as the same orientation would still be kept.

Planner Nguyen agreed that it should still be consistent with Vastu design guidelines; however, he was not an expert.

Interim Director Schwob noted that the terrace or garden at the south end of the home would have to relocate to the west and would not be in axis, anymore. A relocated driveway might cause different grading impacts. They had to use the existing drive and there were probably various engineering standards that would have to be met, if it was changed.

Chairperson Cohen stated that the choice for the Commission seemed to be to approve the project with minor changes or to deny the project. He suggested that the Commission focus on either of those two choices.

Commissioner Sharma asked if the predetermined access point to the lot could be moved.

Interim Director Schwob stated that relocation was probably not a feasible solution, since the other house was currently under construction. The applicant would have to work with the neighboring property owner, which would, in turn, affect all of his plans. An easement line probably ran through the neighboring lot to the south that provided utilities, as well as the roadway, and those easements would also need to be relocated.

Commissioner Natarajan asked if story poles could be used on site.

Interim Director Schwob agreed that story poles would help visualize the size and height of the proposed house.

Commissioner Thomas stated that she was “not happy with this, either with the layout or the house, itself.” Story poles certainly could have helped to visualize the project in relation to the other houses. None of the other houses were shown in relation to this house on the drawings, which had been suggested the last time this project came before the Commission. She suggested that this plan, as presented, be denied and another plan be presented that followed the suggestions made here and at the last hearing, such as placement on the lot and a less boxy main area. Story poles should be put up. The drawings should include the location of the other homes and they should show the appropriate perspectives from those homes.

Commissioner Natarajan added that stepping the house on the site also included stepping back the second floor and making it smaller than the ground floor. This plan showed the second floor as being almost 700 square feet larger than the ground floor.

Commissioner Sharma stated that, as far as he was concerned, the mass of the house was not the big issue. His issue was that the neighbors were taken care of and that their views were not violated. If no neighbor came before the Commission the next time this project was heard, he would probably approve the project.

Commissioner Wieckowski stated that he would not support the motion, because he believed a continuance would take care of the design, if the suggestions made by the Commissioners were followed. He suggested making those suggestions as conditions of approval.

Commissioner Harrison agreed with Commissioner Wieckowski. This house looked no different from those that were already there. It was difficult to tell this applicant that he could not build a similar house. He would support a continuance to allow for a redesign and to allow him to work with the neighbors.

IT WAS MOVED (THOMAS/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (4-3-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING AND DENY PLN2003-00137, PLANNED DISTRICT MINOR AMENDMENT TO P-96-12 AND PRELIMINARY GRADING PLAN.

The motion carried by the following vote:

AYES:	4 – Cohen, Natarajan, Thomas, Weaver
NOES:	3 – Harrison, Sharma, Wieckowski,
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

Chairperson Cohen advised the applicant about the appeal process.

Chairperson Cohen called for a ten-minute recess at 8:40 p.m.

Chairperson Cohen called the meeting back to order at 8:50 p.m.

- Item 6.** **MOUNT VERNON OFFICE CENTER – 39030 & 39042 Mount Vernon Avenue – (PLN2003-00157)** – to consider a Planned District Minor Amendment to allow the construction of a new 5,060 square foot building for medical and general office use, site parking, and landscaping in the Central Business District. This project is categorically exempt from CEQA review per Section 15332, In-Fill Development Projects.

Commissioner Natarajan asked that staff make a brief presentation before the applicant spoke to the Commission.

Interim Director Schwob summarized the history of the project. A set of design guidelines was in the Commissioners' packets. The buildings were to front on the street, a pedestrian-oriented atmosphere would be developed, consolidation of the individual lots would be encouraged, and the lots would be encouraged to be developed in groups. This design showed a building on one lot with parking on the other lot, the intent of which was to develop another building (perhaps a mirror-image) in the future that would share the parking lot.

Planner Nguyen added that the site plan had been modified from the last plan by moving the building closer to Mowry Avenue and by breaking up the expanse of the parking lot.

Commissioner Harrison asked if the moratorium was still in effect.

Interim Director Schwob stated that the planned district superseded the moratorium.

Planner Nguyen recalled that the moratorium had called for the adoption of a planned district.

Sy-Cheng Tsai, architect, introduced owner, Henry Wu, and noted that they had been working for three years on the project. He passed a color rendering of the latest iteration for the project and stated that they were willing to work with staff to meet all the conditions and to move on with the project.

Commissioner Natarajan asked if the color rendering was reflective of the final colors. She asked if he agreed with the condition that required operable windows throughout the building.

Mr. Tsai replied that they planned to use the grey, as shown on the rendering. They agreed with the condition concerning the windows in certain parts of the building.

Chairperson Cohen opened the public hearing.

Henry Wu, owner, closed by stating that all the guidelines would be followed so that they could finally progress with this project.

Chairperson Cohen closed the public hearing.

Commissioner Natarajan asked what was planned for the sidewalk.

Planner Nguyen replied that the public sidewalk was subject to Engineering's approval, which would conform to City standards.

Interim Director Schwob stated that the tan colored, 14-foot wide concrete sidewalk was the standard.

Commissioner Natarajan noted that was a 1970 standard and asked if it had been updated. In her opinion, sidewalk detailing was critical for the surrounding area, and she was more interested in that than the architecture of a single building, which was part of the downtown plan.

Interim Director Schwob offered to review the standards and to bring a proposal back to the Commission. It probably was not as important to the applicant as getting started on the project.

Commissioner Natarajan believed that location for the artwork was inappropriate, because of the windows and transparent surfaces that would be behind it. She suggested that the entrance area with the special paving would be a better place.

Chairperson Cohen suggested making that a condition.

Commissioner Thomas asked if the offer of access to the rear property owner was to provide parking for the auto parts business. She asked how parking would be accessed if a larger building was constructed on the back lot.

Planner Nguyen stated that she was correct. Incremental change in the area was expected over time. A deed restriction would be established. There were two scenarios concerning the parking: either a driveway would lead to a parking lot in the rear that had an excessive amount of parking or a pedestrian walkway could be constructed, linking buildings.

Commissioner Harrison applauded the owner for his patience. He would support the project. He asked what would happen if one of the units became general retail, which would need more parking. He asked if the downtown parking bonus could be applied.

Interim Director Schwob stated that either use was allowed under the zoning. When another tenant applied for a business license, parking would be evaluated. An off site parking agreement could be reached with a neighboring property owner who had excess parking, if needed.

Commissioner Natarajan answered that the parking bonus was to be applied only to certain retail businesses, such as a white tablecloth restaurant.

Interim Director Schwob stated that was part of the CBD concept plan and a means to implement it had not yet been created.

Commissioner Natarajan asked if on street parking would be allowed and would it count toward the required parking. She asked if this street was part of the planned district.

Planner Nguyen stated that on street parking would be available but it could not be counted towards current parking requirements.

Commissioner Natarajan asked if a condition could be added that stated that the 1970 streetscape guidelines were to be updated that they would not be followed with this project.

Commissioner Harrison asked if staff would provide the sidewalk guidelines, but the Commission would approve the project, as presented.

Interim Director Schwob replied that when the public improvement plan was brought forward, the applicant would then have to meet the new standards.

Commissioner Natarajan asked if “to the extent feasible” be deleted from the end of the condition concerning operable windows.

IT WAS MOVED (NATARAJAN/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

THE ANTIQUATED, 1970 STREETScape GUIDELINES WERE NOT TO BE FOLLOWED;

AND

STAFF WOULD BRING NEW STANDARDS FOR SIDEWALKS IN THE PUBLIC REALM TO THE PLANNING COMMISSION FOR REVIEW;

AND

DELETE LAST PART OF SENTENCE NO. 1, AS INDICATED IN THE LANDSCAPE PLAN, REGARDING PLACEMENT OF THE ARTWORK ADJACENT TO THE ENTRANCE AT THE FRONT PLAZA;

AND

DELETE “TO THE EXTENT FEASIBLE” FROM CONDITION NUMBER 9;

AND

FIND PLN2003-00157 CATEGORICALLY EXEMPT FROM CEQA REVIEW PER SECTION 15332, IN-FILL DEVELOPMENT PROJECTS;

AND

FIND PLN2003-00157 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY’S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN’S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT IS IN CONFORMANCE WITH THE CENTRAL BUSINESS DISTRICT CONCEPT PLAN;

AND

APPROVE PLN2003-00157, AS SHOWN ON EXHIBIT “A”, SUBJECT TO CONDITIONS ON EXHIBIT “B”.

The motion carried by the following vote:

AYES:	7 – Cohen, Harrison, Natarajan, Sharma, Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

- Item 7. SHARPLESS APPEAL – Easterly of Fremont Boulevard, between Ferry Lane and Darwin Drive – (PLN2004-00021)** – to consider an appeal of a staff determination that room additions are prohibited in a district encompassing 34570 Lang Avenue and 89 other lots in the Northern Plain Planning Area. This project is categorically exempt under Section 15301(e) of the CEQA Guidelines, relating to existing facilities and minor additions thereto.

Leonard Sharpless, appellant, stated that he was speaking for many neighbors who were also interested in making small additions to their homes. His addition would add 130 square feet to his 1600 square foot house. Twenty-four percent of lot would be covered by the house with the addition. He noted that newer homes in the area covered up to 33 percent of their lots. He said that the CC&Rs for his development stated that additions were allowed (copies of which the Commissioners had), contrary to the code referenced by the City. He presented a petition with 32 signatures of homeowners in the area who supported allowing small additions. Three homeowners opposed additions, because they feared it could “explode into uncontrolled growth.” He believed that not allowing additions of any kind would contribute to the stagnation of the neighborhood. He quoted Land Use Policy LU1.18 and asked that individual additions be reviewed using it as a basis for approval. He believed that each project should be viewed individually on its own merit. He reviewed and made comments on each of the points made in the staff report.

Commissioner Harrison asked if there was a homeowners association in existence at this time and where did the copies of the CC&Rs come from.

Mr. Sharpless replied that he had no evidence that a homeowners association had ever existed, but there was a method to reestablish it under the CC&Rs. The Commission's copies were made from the CC&Rs that he had received when he bought his home.

Commissioner Natarajan asked if the addition would add five feet to the existing rooms and bathroom and reduce the setback by two feet.

Mr. Sharpless stated that he hoped to punch out the kitchen a little bit. The width of the addition would vary from two feet to four feet by 30 feet. He stated that the removing setback would measure 18 feet with the addition.

Chairperson Cohen opened the public hearing.

Larry Knight, Wells Avenue neighbor, opposed the appeal. He stated that his 1300 square foot house comfortably accommodated him, his wife and his son. He purchased his home in this development because he did not want to be surrounded by mini-mansions, as was the case in his former neighborhood. Most houses had one common wall with the neighbor and very small backyards. He understood the applicant's wish to add some space to his house, but he feared everyone else in the neighborhood would also decide to build additions. If the applicant wanted a bigger house, he should move to a different neighborhood.

Sandy Chetty, Anchor Drive neighbor, stated that her CC&Rs stated that no building additions were allowed, and she believed that they protected the extremely close living arrangements. The homes were originally designed to attract small families and empty nesters. Nowadays, families with as many as three children lived in these homes. She had many complaints about the some of the uses and the closeness of the homes. She believed that the City did not care about the neighborhood's concerns. She agreed with the denial and opposed the appeal.

Commissioner Harrison asked where in the CC&Rs stated that there could be no additions.

Ms. Chetty stated that there were two copies of the CC&Rs, one of which had the stamp by the County Recorder.

Commissioner Harrison replied that his copy was stamped and was printed on both sides. On Page 3, Paragraph H, he read, "No improvements or additions of any kind or construction of any building on any lot or portion thereof shall be begin without the owner first obtaining approval of the committee referred to in Paragraph 30 and obtaining a building permit from the City of Fremont for plans based on such approval prior to the start of that construction improvement."

Ms. Chetty stated that she was not sure and asked if the informational sheet had been provided to the Commission.

Commissioner Harrison stated that he had that sheet, along with the minutes of the Planning Commission meeting that had previously heard a similar request. The CC&Rs was the sheet that showed it had been recorded with the County.

Commissioner Thomas asked if she was looking at the sheet entitled "Informational." Was she speaking of Condition 4?

Ms. Chetty replied that she was looking at a sheet dated May 18, 1976.

Commissioner Harrison stated that was the Agenda and Summary Report, City Council Regular Meeting, May 18, 1976.

Commissioner Thomas read the comment from a document, dated April 22, 1976, on page 4, Number 4, "The CC&Rs shall contain the restriction that no additions should be allowed" and asked if that was what Ms. Chetty was referring to.

Ms. Chetty agreed that was the document on which she was basing her comments.

Janet Strickler, original Anchor Drive owner, stated that she had always understood that additions were not allowed. She had considered adding onto her home and the City had not allowed it. She respected the City for that. She shared a wall with the owner behind her. A second story would infringe upon his rights, and she feared that everyone would want to build second stories onto their homes, if this addition was allowed. She did not want the CC&Rs or the zoning changed to allow additions. She recalled various problems that had occurred over the years within the development, which the City had helped to solve. She wondered if the 32 signatures on the petition were of property owners, as many of the homes were rentals and the "property owners are not around and they don't really visit their property often enough to keep it up." When one bought a home in this neighborhood, a copy of the CC&Rs were given to the new homeowner, who should know at that time certain things were not allowed. The CC&Rs were due to expire in 2011.

Commissioner Thomas stated that the copy of the CC&Rs that the Commission had did not state that additions were not allowed. She asked where she had found that statement.

Ms. Strickler replied that she was looking at the section call Walls, Item E, Page 7, that spoke of alterations and how nothing, other than restorations, was allowed. If the CC&Rs were opened to those had did not have a common wall, she asked what would happen to the homeowners who had common walls.

Pius Bachan, Hurst Avenue resident, stated that he knew of neighbors on his block who wanted to make some improvements to their homes, but did not necessarily wish to add a story. He had been unaware of the restriction concerning alterations. The new home next to him was two stories. Everyone in the area was benefited by these new two-story homes at the end of his block, as would also happen with any additions that current homeowners in the development might make. The applicant was talking about adding just a few feet, no second story, and not at all like the previous applicant who wanted to build a huge, multistory home. He asked that each home be looked at individually, based on what they wanted to do.

Mr. Sharpless closed by stating that he agreed with the concern of uncontrolled growth that the other speakers had expressed. He hoped that this hearing was the beginning of increased communication among the homeowners who should have the chance to review and approve, or disapprove, of potential changes to homes near them. He argued that improvement restrictions contributed to the many rentals available in the neighborhood. If owners were allowed to make minor improvements, they were more likely to stay in their homes, rather than moving elsewhere and renting the house. One of the speakers was speaking about the shared walls, and he agreed that those should not be included. No renters had signed his petition.

Commissioner Thomas asked if his side neighbor had been contacted and what his opinion was about the proposed addition.

Mr. Sharpless stated that he had not spoken with them. However, he did not anticipate any complaints about decreasing his setback from 21 feet to 18 feet.

Chairperson Cohen closed the public hearing.

Commissioner Wieckowski stated that the packet contained a portion of Condition No. 4 and was not complete. He asked what the rest of the condition stated. It seemed that the Commission was being asked to reconcile what had been recorded on the deeds with the CC&Rs and what had been adopted in the code.

Interim Director Schwob stated that the Zoning File Z 76-3, Page 4, read, "The conditions, covenants and restrictions for these units shall contain the restriction that no building additions shall be allowed and shall not prohibit storage of boats and recreation vehicles in rear yards."

Commissioner Wieckowski asked if the CC&Rs were entirely void, since they did not seem to meet that condition.

Assistant City Attorney Seto replied that the CC&Rs were not entirely void, but the Conditions of Approval had not been properly reflected in them. Staff had consistently advised persons from this neighborhood that the zoning conditions were still the controlling factor in this situation. The alternative, as offered in the staff report, would be to propose a zoning amendment to change that condition.

Commissioner Thomas asked how the CC&Rs could be changed to reflect the zoning conditions.

Assistant City Attorney Seto stated that the CC&Rs were a contract with all the property owners in the area. Seventy percent of the property owners would have to agree to amend the CC&Rs.

Commissioner Thomas stated that this same problem had arisen in her neighborhood. A voluntary association was formed but it was found that it had no legal power of enforcement. She wondered if the City could address this problem in some kind of communication, such as the City's newsletter.

Assistant City Attorney Seto noted that newer developments in the City had common open land and the City required that a property manager be hired who could oversee some of these kinds of problems.

Commissioner Wieckowski asked if the zoning ordinance was changed, were the CC&Rs sufficiently ambiguous to allow the kind of addition that the applicant was proposing.

Assistant City Attorney Seto replied that if the zoning ordinance was changed, the reading of the CC&Rs still required that some type of architectural control committee was needed to provide approval. In a sense, the applicant would have to obtain a rezoning and then would have to reform the architectural control committee in order to obtain approval by the homeowners association.

Commissioner Wieckowski noted that the Commission was scheduled to review rezoning within the next six months and asked if the applicant could piggyback on a general rezoning. It seemed crazy that the Commission was involved with a 130 square foot addition on an appropriate sized lot.

Interim Director Schwob replied that the rezoning that the Commission was likely to review would concern higher density, multi-family use and not this type of rezoning action.

Vice Chairperson Weaver took over the chairing of the meeting after Chairperson Cohen left, due to a family emergency.

Commissioner Natarajan asked if all the houses in this development were zero lot. She noted that Condition 5 allowed enclosed patios that did not cover more than 30 percent of the rear yard, and she expressed doubt that any situation might arise where that condition would be applied. She asked if the rear and side yards could be switched. If so, it seemed that Condition 5 would allow this addition.

Interim Director Schwob stated that the majority of the lots in this development were zero lot. Some homes had a larger rear area and it seemed possible that a patio enclosure might be constructed in the area that was not along the zero lot line. He agreed that, in some instances, it was possible to switch the rear and side yards. He agreed that there was a conflict, which might be why the CC&Rs were written as they had been.

Commissioner Sharma stated that he believed that the code should be followed, which was what staff had recommended. The CC&Rs should be changed to reflect the code. What could the City do to prevent more confusion for future owners when buying homes in this development?

Interim Director Schwob stated that it took architectural committee approval along with City approval. Every piece of property in the City was under some kind of zoning. When someone came into the City to apply for a permit, staff would then advise the homeowner what the requirements were. Obviously, the Condition and the CC&Rs were not made "as consistent as they could have been." Changing deed restrictions was difficult and costly.

Commissioner Harrison stated that this was a unique area. He asked if there were special City conditions that required two homeowners who shared a wall would have to agree to any instance that involved the shared wall. He asked if the applicant chose to get 70 percent of the homeowners in the development to agree to amending the CC&Rs to state that additions were allowed, would the CC&Rs and the condition still conflict.

Interim Director Schwob replied that he believed the building code would be followed. The consent of the neighboring property owner of a shared wall would have to be obtained before making any changes.

Assistant City Attorney Seto stated that the city would propose a two-part process, if the applicant wished to proceed. The first part would be amending the zoning to allowing the addition and the second part would be to go to 70 percent of the property owners for approval to change the CC&Rs to reflect the amended zoning.

Commissioner Thomas agreed that this addition would never be noticed on this extra large lot. She would like to approve this specific application. However, the law precluded this addition, which put the applicant and the residents who wished to reform a homeowners association "between a rock and a hard place." She faulted the applicant for not talking to the neighbor who would be most affected by the addition before starting the process.

IT WAS MOVED (THOMAS/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING AND DENY APPEAL.

The motion carried by the following vote:

AYES:	6 – Harrison, Natarajan, Sharma, Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Cohen
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Assistant City Attorney Seto pointed out that copies of letters sent to the community were in the Commissioners' packets regarding a community meeting on September 29th, which involved the landslide overlay related issues, as well as, the issue related to the risk from the movement of land and earth from public lands onto private property and on which the Commission will take action during the October 23rd meeting, if a quorum of the Commission planned to attend the September 29th community meeting, a notice would have to be made of a special meeting.

Vice Chairperson Weaver stated that she probably would not attend and it looked like a majority of the Commissioners would not be able to attend, either.

Commissioner Sharma asked if he could attend the meeting as a private citizen.

Assistant City Attorney Seto clarified that if three of the Commissioners wished to attend, it would not constitute a quorum and it would not have to be noticed. She assumed that the head shaking by the Commissioners meant that most of them had something else to do that evening.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Sharma stated that he would pass an e-mail to staff that he had received from a resident concerning a deteriorating creek in his area and asked if the City had the responsibility to inspect it.

Commissioner Wieckowski asked if staff could provide an update on the Mission Creek restoration.

Assistant City Attorney Seto stated that many of the creek-related projects were listed in the Capitol Improvement Projects and it would be the best forum in which to provide input or receive information. The Commission usually reviewed it on a biannual basis. However, she would be happy to provide information to all the Commissioners on this particular item.

Commissioner Sharma asked if a Capitol Improvement meeting was coming up in November for the Planning Commission.

Vice Chairperson Weaver stated that meeting would involve the budget review and she asked if a date had been set.

Assistant City Attorney Seto replied that she was still looking for dates when everyone was available.

Vice Chairperson Weaver asked for an update on Planning Division Staffing.

Interim Director Schwob stated that the Planning Department was in the process of recruiting a new Planning Director, along with an Associate Planner and a Zoning Technician. Momoko Ishijima had been promoted from temporary Zoning Technician to permanent Planner I; Cliff Nguyen was promoted to Planner II; Barbara Meerjans was now the Acting Zoning Administrator.

Commissioner Sharma asked for a list of staff, along with their pictures.

Interim Director Schwob stated that usually the pictures of new staff were posted. Once the new Director was on board, the annual meeting would be scheduled for January.

Meeting adjourned at 10:20 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Jeff Schwob, Secretary
Planning Commission